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Appln. No. 10/693,849  
Preliminary Amendment

OCT 16 2006

**REMARKS**

Claims 1 and 5-11 are pending in the application. Claims 1 and 6 have been amended by this preliminary amendment. Reconsideration and allowance of Applicant's claims are respectfully requested.

**Claim Objections**

Claim 6 was objected to under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. In addition, the limitation "each rubber layer" was objected to due to lack of antecedent basis.

Written description support for multiple rubber layers of differing thickness as recited in claim 6 may be found at least in paragraph [0016] of the application, which recites that "[b]y selection of . . . the thicknesses of the drums 22 and 28 and the rubber layers 26, . . . a desired set of acoustic frequencies may be filtered out." In addition, claim 6 has been amended to address the antecedent basis objection. Therefore, it is respectfully requested that this objection be withdrawn.

**35 U.S.C. § 103 Rejections**

Claims 1 and 5-11 were rejected under 35 U.S.C. 103(a) as being obvious over Faulhaber (U.S. Patent Application Publication No. US 2001/0009207) in view of Bychinsky (U.S. Patent No. 3,966,015).

As amended, independent claim 1 recites, among other things, a flexible means "wherein the flexible means covers the hole to form a barrier that prevents fluid from flowing through the

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hole." Neither Faulhaber nor Bychinsky, alone or in combination, describe or suggest at least this feature of amended claim 1. Therefore, it is respectfully requested that this rejection be withdrawn.

Faulhaber is directed to an acoustic absorber 10 with an interior absorber chamber 12 connected by openings 13 to a duct 20 to reduce the sound in the duct 20. Paragraph [0026] An elastic membrane 15 is used to vary the volume of the chamber 12. Paragraphs [0031] and [0032] Unlike Applicant's claim 1, among other things, Faulhaber does not describe or suggest covering the openings 13 with the membrane 15 to form a barrier that prevents fluid from flowing through the openings 13.

Bychinsky fails to remedy the above noted deficiency of Faulhaber. In particular, Bychinsky fails to describe or suggest a flexible means that covers a hole to form a barrier that prevents fluid from flowing through the hole. Instead, Bychinsky is directed to a silencer element divided into a plurality of compartments by spaced apart intermediate wall portions. Col. 3, lines 16-41. Each intermediate wall portion (e.g., 48) has an exhaust opening (e.g., 58). Each compartment includes a flow diverting baffle (e.g., 60) to prevent linear flow of exhaust through the exhaust openings (e.g., 58). Unlike Applicant's claim 1, among other things, Bychinsky has no flexible means covering the hole (exhaust openings) to form a barrier that prevents fluid from flowing through the hole. In fact, if Bychinsky were to have such a barrier, there would be no available flow path for exhaust through the silencer element 10, which would drastically alter the principle of operation of Bychinsky and Bychinsky would not work for its intended purpose.

Claims 5-11 depend from claim 1, and are believed to be allowable for at least the reasons given for claim 1.


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It is respectfully submitted that all claims are in condition for allowance, and early notice of the same is respectfully solicited. Please charge the RCE fee of \$790.00, the one month petition for extension of time fee of \$120.00, and any other charges or credits to Deposit Account 50-0958. If any questions remain, the Examiner is invited to contact the undersigned attorney at the telephone number listed below.

Respectfully submitted,

Date: October 16, 2006  
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